

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC.,
Plaintiff,
vs.

APPLE INC.,
Defendant.

APPLE INC.,
Counterclaimant,
v.

EPIC GAMES, INC.,
Counter-Defendant.

Case No. 4:20-cv-05640-YGR
PRETRIAL ORDER NO. 3

TO ALL PARTIES AND COUNSEL OF RECORD:

On Monday, March 26, 2021, the Court held a regularly-scheduled pretrial conference. Considering the parties' requests and arguments, and good cause appearing, the Court issues the orders set forth below, including a modification to Pretrial Order No. 1.

1. The Court is still preparing to proceed in person assuming the conditions in the Bay Area continue to improve at current rates which would have a majority of Bay Area counties in Minimal Tier 4 by April 27, 2021 and perhaps all by May 4, 2021.
2. For public health and safety reasons given COVID-19, the following protocols are

ORDERED:

- a. Each party may have no more than six (6) individuals in the courtroom. Each may choose how to allocate those slots. If the Court can accommodate more given public safety concerns, the parties will be so advised.
- b. Every person shall wear a mask while in the courthouse. The Court will provide transparent masks for witnesses to use while testifying.

- c. The Court will designate a room close to the courtroom to be used by the witness who is next scheduled to testify on any given day. Parties are advised that the Court will not be able to accommodate cleaning during the business day although the room will be stocked with wipes. If any party choses to use the room, you should take appropriate precautions.
 - d. The Oakland courthouse has an attorney lounge which is open and available. This lounge is not monitored. Two conference rooms exist which can be reserved by lawyers for any trial in the courthouse on a first-come, first-serve basis by contacting Odile_Hansen@cand.uscourts.gov.
3. With respect to previously-designated confidential information, such designation is not presumptive at trial. The Court concurs that the parties should meet and confer and attempt to limit the quantity of information to be sealed. This trial is a public proceeding. Judges in this district critically evaluate any request to seal.
4. Deposition Designations
 - a. Pretrial Order No. 2 identifies the parameters under which the Court will consider deposition designations. The Court agrees that the parties may use a “run time” calculation from a third-party vendor to calculate the time associated with the designations.
 - b. Each deposition designation for a witness shall bear the Exhibit marking “Ex. Depo. [insert number]” and repeat with consecutive numbering.
 - c. The parties shall file one joint stipulation requesting that the Court admit the exhibits for all deposition designations so that they will become part of the trial record. The stipulation shall be submitted with the designations and shall identify each exhibit separately with the name of each deponent.
5. Expert Witness Written Direct Testimony
 - a. The parties are allowed to submit written direct testimony of its expert witnesses which *in total* shall be limited to 100,000 words per side. The parties may divide the words in any many they chose among their respective fifteen

(15) expert witnesses.

b. Written testimony shall begin with an executive summary listing each opinion and identifying by page number the explanation of such opinion. It shall include an oath by the declarant and shall end noting the word count for the written testimony.

c. Epic Games Inc. shall serve, but not file, its written direct testimony on Apple Inc. by **April 20, 2021**. Apple shall serve, but not file, its written direct testimony on Epic Games by **April 23, 2021**. The parties shall then file and serve the final written direct testimony by **Tuesday, April 27, 2021**. One physical hard copy and an electronic version on flash drive, in Word format, shall be delivered to the Court no later than **noon on April 28, 2021**. Each party shall make arrangements for the delivery by sending an email to YGRChambers@cand.uscourts.gov.

d. The Court acknowledges that some expert testimony may be proffered prior to proof of a fact upon which an opinion relies. Ultimately, if facts are not admitted into evidence, and an expert relied upon such fact, the parties may move to strike the opinion on which it was based, if appropriate.

e. Each written testimony submission shall bear the Exhibit marking “Ex. Expert [insert number]” and repeat with consecutive numbering.

f. The parties shall file one joint stipulation requesting that the Court admit the exhibits for all written testimony so that they will become part of the trial record. The stipulation shall be submitted with the written testimony submissions. Further the list shall include the exhibit number, the name of the witness, the word count and the summation of the collective word counts.

6. The Court shall not bifurcate the remedies portion of the trial.

7. The Court **MODIFIES** Pretrial Order No. 1 with respect to the filing of a redlined version of the proposed Findings of Fact to reflect what was proved and the record references and the corollary Conclusions of Law. Rather than delay such filing until the

end of the trial, the parties shall file the update *each* day following a trial day. Any objections to record citations shall be made within two business days or shall be waived.

8. Parties may use encrypted digital wireless system that includes a receiver and transmitter with XLR connector. However, given the Zoom platform overlay as a device for allowing witnesses to participate remotely, the parties should test their equipment in advance.

9. Parties are advised that the U.S. Marshals require a court order to allow equipment into the courthouse. Thus, if applicable, a party will need to send the Court a proposed form of order with any specific requests.

10. The next pretrial conference shall be Wednesday, **April 21, 2021 at 9:00 a.m.** by the Zoom platform.

IT IS SO ORDERED.

Dated: March 30, 2021


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE